

## **REMARKS**

Applicant, by the amendments presented above, has made a concerted effort to present claims which more clearly define over the prior art of record, and thus to place this case in condition for allowance. Currently, claims 1 and 3-21 are pending. Claim 2 was canceled without prejudice in this amendment.

### ***Allowable Subject Matter***

The Examiner indicated that claims 4-7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1 has been amended to include the limitations of claims 2 and 6/2 and to delete the reference to the “spontaneously breathing” user. The Examiner had indicated that claim 6/2 was allowable prior to the addition of the “spontaneously breathing” user limitation. Therefore, Applicant submits that amended claim 1 is in condition for allowance. Claim 3 is dependent upon claim 1 which Applicant submits is in condition for allowance. Consideration and allowance of claims 1 and 3 is requested.

Claim 4 has been rewritten in independent form and includes all of the limitations of claims 1-3 and to delete the reference to the “spontaneously breathing” user. The Examiner had indicated that claim 4 was allowable prior to the addition of the “spontaneously breathing” user limitation. Therefore, Applicant submits that amended claim 4 is in condition for allowance. Claims 5-7 are dependent upon claim 4 which Applicant submits is in condition for allowance. Consideration and allowance of claims 4-7 is requested.

***Claim Rejections – 35 U.S.C. §102(b)***

Claims 1-3, 8, 10 and 12 were rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,088,131 to Elam. Applicant submits that claims 1 and 3 are allowable as discussed above. Claim 2 has been cancelled.

Reconsideration and allowance of amended claims 8, 10 and 12 is respectfully requested in view of the amendments and remarks herein. Independent claim 8 has been amended to specify “a pressurised gases supply for supplying a continuous positive pressure above ambient”.

Elam solely discloses “a pressurized source”. There is no disclosure in Elam that this pressurized source supplies oxygen at a continuous positive pressure above ambient. Moreover, the Examiner states on page 4 of the Office Action that “If oxygen were selected and the device used on a breathing patient, there would not be a need for the device to provide positive pressure to the patient during exhalation”. Applicant submits that the Examiner admits that the provision of such positive pressure is not disclosed or suggested by Elam. Accordingly, Applicant submits that amended claim 8 is not anticipated by and is not rendered obvious by Elam. Reconsideration and allowance of claim 8 is respectfully requested.

Claims 10 and 12 are dependent upon claim 8 which Applicant submits is in condition for allowance. Reconsideration and allowance of claims 10 and 12 is respectfully requested.

***Claim Rejections – 35 U.S.C. §103***

Claims 9, 11 and 13 were rejected under 35 U.S.C. §103 as being unpatentable over Elam.

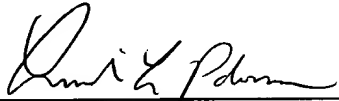
Claims 9, 11 and 13 are dependent upon amended claim 8 which Applicant submits is in condition for allowance. Reconsideration and allowance of claims 9, 11 and 13 is respectfully requested.

In view of the above Amendments and Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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